



# EXECUTIVE OFFICE OF TECHNOLOGY SERVICES & SECURITY

COMMONWEALTH OF MASSACHUSETTS | 1 ASHBURTON PLACE, 8TH FLOOR, BOSTON, MA 02108

**CHARLES D. BAKER**  
Governor

**CURTIS WOOD**  
Secretary

**KARYN E. POLITO**  
Lieutenant Governor

February 17, 2019

VIA ELECTRONIC MAIL

Susan Smith  
[67519-04095643@requests.muckrock.com](mailto:67519-04095643@requests.muckrock.com)

Dear Ms. Smith:

Attached please find the responsive documents to your records request for settlement agreements. These documents were also uploaded to the muckrock.com site.

In response to your inquiry regarding redactions and the legal basis for such redactions, please note the following:

1. Statutory

Under Massachusetts law, records that are (1) "personnel... files or information" as well as (2) "other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy," are exempt from disclosure. G. L. c. 4, § 7, Twenty-Sixth (c),

2. Case Law

The Superior Court, in construing the scope of the personnel file or information exemption category, has held that the following categories of information may be redacted or withheld, when responding to a Public Records Request seeking settlement agreements and other similar agreements:

"[information that is] subject to redaction may generally be classified into the following categories: (1) promotion of grade; (2) compensation at a different salary grade; (3) adjustment in compensation; (4) waiver of bumping rights and/or recall rights; (5) entitlement to remain on administrative leave; (6) requirement to tender a letter of resignation; (7) demand of voluntary resignation; (8) reinstatement; (9) layoff; (10) agreement by an agency to remove a letter from a personnel file; (11) agreement by an agency concerning the providing of references and their contents; (12) the requirement that an employee meet with a supervisor to review progress of assigned matters; (13) adjustment of an agency's records to reflect an employee's status; (14) adjustment or continuation of employee benefits, such as unemployment assistance, COBRA, and retirement benefits, and agreement regarding back wages; (15) recitations concerning grievances, including agreement to withdraw a grievance and acknowledgment by an employee of the absence of a pending grievance; (16) a statement of resolution of all claims concerning termination of employment and prior disciplinary actions, (17) agreement to turn in agency property, (18) global resolution involving the entering of a *nolle prosequi* by a prosecutorial official; (19) language affirming an agency's legitimate concern for discipline and an employee's receipt of a memorandum of verbal discipline; and (20) completion by an employer of harassment training. The distinguishing characteristic of these categories of

information is their manifest "useful[ness] in making employment decisions regarding an employee," *id.* Such portions contained in the agreements which have been submitted as exhibits are entitled to be withheld from mandatory disclosure."

*Globe Newspaper Company v. Exec. Office of Administration and Finance*, Civ. A. No. 2011-01184 (2013), p. 34 – 35.

With respect to the exemption category related to "materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy," the Superior court stated that an agency is not "obligated to produce unredacted agreements in response to ... [a] records request." *Id.* at p. 40.

Please let me know if you have any questions or need further assistance. My direct dial is

Very truly yours,

A handwritten signature in black ink, appearing to read "Michelle M. Burwell", written in a cursive style.

Michelle M. Burwell  
EOTSS Records Access